IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6611 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DALWADI VINODBHAI MOTIBHAI

Versus

DALWADI (PARMAR) DALSUKHBHAI HARJIBHAI

Appearance:

1. Special Civil Application No. 6611 of 2004

MR BD KARIA for Petitioner Nos. 1-2

..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 29/07/2004

ORAL JUDGEMENT

1. The present petition has been preferred by the petitioners under Article 227 of the Constitution of India challenging the order dated 04.06.2004 passed by the Joint District Judge, Dhrangadhra in Misc. Civil

Appeal No.05 of 2004 as well as the order dated 17.03.2004 passed below Ex.5 by the Civil Judge (J.D.), in Regular Civil Suit No.34 of 2003.

2. The present petitioners are the original defendants in Regular Civil Suit No.34 of 2003 pending before the Civil Judge (J.D.), Halvad. The said suit was filed by the respondent (original plaintiff) for permanent injunction, wherein it was prayed that the petitioners (original defendants) or his persons or agents should be restrained from enjoying agricultural land bearing Survey No.109 - paiki admeasuring 3 acres.

3. Learned advocate for the petitioners submits that the agricultural land bearing Survey No.109 is wholly and totally owned and possessed by the present petitioners (original defendants) since long. This aspect has not been appreciated at all by the learned trial Court as well as by the lower appellate Court, while deciding the stay application below Ex.5 and while deciding Misc. Appeal and, therefore, the orders passed by both the Courts below deserve to be quashed and set aside. Learned advocate for the petitioners also submits that on affidavits in support of the case of the petitioners (original defendants) is also filed before the trial Court, which reflects that the present petitioners are having possession of the suit premises. This aspect has also not been appreciated by the trial Court, while deciding the stay application Ex.5. It is also contended by the learned advocate for the petitioners that the said agricultural land bearing Survey No.109 paiki is inherited by the present petitioners, because of the death of the father of the petitioners. Since last more than 20 years, the petitioners (original defendants) are in possession of the said suit premises. Even the panchnama prepared by the Court Commissioner also reflects the fact that the present petitioners are in possession of the suit premises. This aspect has not been appreciated by the Courts below and hence, the orders passed by both the Courts below deserve to be quashed and set aside.

4. I have perused the papers on record and orders passed by both the Courts below. Looking to the facts and circumstances of the case, there is no error in the said orders passed by both the Courts below, much less an error apparent on the face of the record and there is no perversity in the said orders. On the contrary, the orders passed by both the Courts below are true, correct and in consonance with the facts and law. As the Civil Suit is already pending before the trial Court, it is not

necessary for this Court to evaluate and go into fine nicety to the facts. Nonetheless, suffice it to say that as per the panchnama, of the land in question, produced at Mark 12/1 and 12/2 before the trial Court, it is explicitly clear that there are two part of the said land bearing Survey No.109. As per the panchnama (at page-52 of the memo of the petition), the present petitioners are in possession of the agricultural land bearing Survey No.109 paiki admeasuring 3 acres - 28 gunthas, whereas 3 acres out of the said Survey No.109 paiki is of the respondent (original plaintiff). Looking to the panchnama and map, one fact which emerges out of the said two documents is that the agricultural land bearing Survey No.109 has been divided into two parts, which corroborate the contentions of the respondent (original plaintiff). Similarly, on the revenue record, the said agricultural land is shown in the name of respondent (original plaintiff) since long. Therefore, the conclusion arrived at by the trial Court in the injunction application Ex.5 in Civil Suit No.34 of 2003 is true and correct. The stay granted by the trial Court below application Ex.5 requires not any interference by this Court. Similarly, there is no error in the order passed by the Joint District Judge, Dhrangadhra in deciding Misc. Civil Appeal No.05 of 2004, arising out of a decision of the trial Court below Ex.5. The reasons assigned in paras-8 to 12 and para-15 in the order passed by the lower appellate Court are true and correct. There is no substance in this petition, this petition fails and it is dismissed, accordingly. No order as to costs.

[D. N. Patel,J.]

(vijay)